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Issue Date: 03 January 2006

In the Matter of:

KARL HAUSNER FARMS, LLC,
Employer

Case No.: 2006-TLC-3

FINAL DECISION AND ORDER

This matter arises under the temporary agricultural labor or services provision of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a) (hereinafter referred to as "the Act"), and its implementing regulations found at 20 C.F.R. Part 655, Subparts B and C (hereinafter referred to as "the regulations"). This Decision and Order is based on the written record, which includes the initial appeal by Employer, the certified record from Employment & Training Administration Office of the Department of Labor ("ETA"), and an e-mail sent by Harry Sheinfeld, Solicitor for the Department, to the undersigned and to Employer's counsel on December 23, 2005.

Procedural History

This office received Employer's appeal on December 8, 2005. The ETA case file was received on December 16, 2005. A conference call was held on December 16, 2005, and parties agreed that the sole issue was whether the housing site is sufficient under the regulations. The ETA denied the Employer's application for temporary alien agricultural labor based on the application of 29 C.F.R. § 1910.142 (a)(2). Employer argued and the Solicitor did not contest that ETA applied the incorrect regulation and that 20 C.F.R. §654.404 should have been applied. The parties agreed to an additional inspection of the housing site to determine if the housing site complied with the requirements of 20 C.F.R. § 654.404. This additional inspection was completed on December 19, 2005, and it was determined that the housing site satisfies the requirements of 20 C.F.R. § 654.404. The parties agreed that the location of the housing site was no longer an issue during a conference call held on December 29, 2005.

On December 23, 2005, the Solicitor sent an e-mail status update to the undersigned and Employer's counsel. The e-mail consisted of two forwarded e-mails: one from Rosa Ortega, Migrant Labor Inspector, Bureau of Migrant, Refugee and Labor Services, to Carol Joy Schmitt at the Bureau of Migrant, Refugee and Labor Services and another e-mail forwarding the first e-mail to John Abraytis at the ETA. The e-mail concerns water samples that were taken during the December 19, 2005 inspection of the housing site. The water samples were returned to Employer for lack of postage. When contacted about the timing of the sample, the State Lab of

Hygiene indicated that a new sample would be needed because of the age of the December 19, 2005 sample. A conference call was held on December 29, 2005, and the Solicitor stated that the results of the water quality test were unknown at the current time, but that the results should be available by the close of business on December 30, 2005. The matter was held open until the close of business on December 30, 2005. The results of the water quality test were unavailable as of the close of business on December 30, 2005.

Discussion

The regulations require denials of applications for temporary labor certification to "state all reasons the application [is denied] citing the relevant regulatory standards." 20 C.F.R §§ 655.106(d) and 655.104(c). The denial stated, "Pursuant to 20 C.F.R. § 655.106, it has been determined that you have not satisfactorily complied with the housing requirements of 20 C.F.R. § 655.102(b), in that no housing has been approved 30 days before the beginning date of employment." 20 C.F.R. 655.102(b) is titled "Minimum benefits, wages and working conditions." The relevant section of 20 C.F.R. §655.102(b) requires that the housing provided by employer meet the full set of standards at 20 C.F.R. §§ 654.404-654.417 or the OSHA Standards at 29 C.F.R. §1910.42, whichever is applicable. 20 C.F.R. §655.102(b)(1)(i).

As discussed above, the parties agree that the housing standards at 20 C.F.R. §§ 654.404-654.417 are applicable in this case. The application for temporary labor certification was denied because of the proximity of the housing site to livestock in alleged violation of 20 C.F.R. § 654.404. The issue of the location of the housing site has been resolved in Employer's favor. ETA is now arguing that water quality, 20 C.F.R. § 654.405, is a basis for denying the application for temporary labor certification.

Although the denial cited 20 C.F.R. § 655.102(b) as the "relevant regulatory standard" for denial, such a blanket citation is insufficient to comply with the regulatory requirement that the denial "state all reasons the application [is denied] citing the relevant regulatory standards." 20 C.F.R §§ 655.106(d) and 655.104(c). At best, the blanket citation to 20 C.F.R. § 655.102(b) puts the employer on notice that one of the provisions at 20 C.F.R. §§ 654.404-654.417 has not been satisfied. In this case, the record reflects that only 20 C.F.R. § 654.404, regarding the location of the housing site, was the basis for the denial. Employer had no reason to believe that the remaining provisions at 20 C.F.R. §§ 654.404-654.417 were bases for denial or would be discussed on appeal.

The nature of temporary labor certification cases requires expediency. When different issues within 20 C.F.R. §§ 654.404-654.417 are considered piecemeal after an appeal to the OALJ, as has occurred in this case, all expediency is lost. Such a piecemeal approach makes it impossible to resolve the matter within the time limits imposed by 20 C.F.R. § 655.112 and necessarily brings up issues that were not the basis for denial of the application for the first time on appeal.

As the application for temporary labor certification was denied solely on the grounds of the location of the housing, 20 C.F.R. § 654.404, and that issue has been resolved, there is no reason to uphold the regional administrator's denial. Accordingly,

ORDER

IT IS ORDERED that the Employment and Training Administration's decision denying the Employer's H-2A application is REVERSED.

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Thomas M. Burke
Associate Chief Administrative Law Judge